IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 91 OF 2005

Mr. Eizaz Ahmed Sultan .. Petitioner

Vs.

1. Shafique Abdul Wahid Khan and ors. .. Respondents

Mr. P.G. Sawant for the Petitioner.
Mr. R.V. Govilkar with Mr.Asif Iqbal I. Patel for Respondent No.1.

CORAM: B.H. MARLAPALLE, J.

Date : October 20, 2005.

P.C.:

1. Heard Mr. Sawant the learned counsel for the petitioner and Mr. Govilkar with Mr. Asif Iabal I. Patel the learned counsel for the respondent no.1.

2. This revision petition arises from the Judgment and Order dated 19th March, 2004 rendered by the learned Judge of the City Civil Court at Greater Mumbai in S.C. Suit No.2456 of 2000 filed under Section 6 of the Specific Relief Act, 1963. The suit

was decreed in terms of prayer clauses (a) and (b) which read as under:-

> (a) That this Hon'ble Court be pleased to order and direct the defendants to hand over quite and peaceful possession of the suit premises being Room No.1, Ground Floor, Vaz Cottage, 5 Church Street, "E" Ward 6815, Mazgaon, Mumbai - 400 010 immediately as per Section 6 of the Specific Relief Act.
>
> (b) Upon handing over the possession of the suit premises to the plaintiff, this Hon'ble court be pleased to issue order of permanent injunction thereby restraining the defendants from disturbing quite and peaceful possession of the plaintiff of the suit premises, except by due process of law.

2A. Initially, the decree was challenged in Writ Petition No.3720 of 2004 which was allowed to be withdrawn with liberty to file Civil Revision

Application under Section 115 of C.P.C. as per the order dated 4/4/2005. The ad-interim order granted in W.P. No.3720 of 2004 on 29/4/2004 was directed to be operated for a period of two weeks. However, the instant Civil Revision Application came to be presented after a period of two weeks i.e. on 26/4/2005 and, therefore, ad-interim order passed and directed to be continued earlier ceased to operate.

3. The suit premises consisted of one room originally owned by defendant nos.1 and 2 i.e. Mrs. and Mr. Vaz. Initially, one Mr. Fayyas Ahmed was the tenant of the suit room and he was staying therein along with his brother Asrar Ahmed. On the demise of Fayyas Ahmed on 25/11/1999, his brother Asrar Ahmed, being the only heir and legal representative of Fayyas Ahmed, continued to occupy the suit room and on 31/12/1999 he executed an MOU in favour of the plaintiff and put the plaintiff in possession of the suit premises on 31/12/1999 itself. The plaintiff continued to occupy the suit room along with his wife and a daughter until he was dispossessed forcibly on 23/2/2000 by the defendants.

3A. Defendant Nos.1 and 2, the landlords, were not represented by any Advocate, though they were served with writ of summons. Defendant No.4 filed written statement and he stated that he became the tenant of the suit room on 10/1/2000 and was put in possession of the said room by the defendant nos.1 and 2 on 15/1/2000. He relied upon the tenancy agreement, rent receipt dated 15/1/2000 and his own affidavit as well as the affidavit of one Mr. Amir Khan Alam Khan so as to show that the original tenant Fayyas Ahmed was not having any brother by name Asrar Ahmed. Thus, the defendant no.4 claimed before the trial court that he was put in possession of the suit room on 15/1/2000 i.e. prior to the alleged date of forcible dispossession of the plaintiff on 23/2/2000.

3B. The trial Court framed the following three issues and all the issues were answered in favour of the plaintiff:-

(a) Does the plaintiff prove that he was in possession of the suit premises till

23/2/2000?

(b) Does the plaintiff prove that he was dispossessed from the suit premises on 23/2/2000 no in according with the provisions of Law?

(c) Is the plaintiff entitled to the reliefs asked in the Plaint?

4. The trial court was pleased to appoint a Court Commissioner vide its order dated 31/5/2000 so as to verify the occupant of the suit room. Accordingly Mr. S.S. Waidande, Assistant Registrar, who was appointed as the Court Commissioner, visited the suit premises and submitted his report at Exh."F". As per the plaintiff on 23/2/2000 at about 8.45 p.m. the defendants along with 16 to 17 other persons came to the suit premises, defendant no.3 broke open the lock and entered the suit premises which was seen by his wife. The defendants put a new lock to the suit room in the presence of the defendant no.1 - landlady and the plaintiff’s wife along with his daughter was left

out. After breaking open the lock the defendants entered the suit premises with a small bag and some other articles which were left therein and while going out they locked the suit premises. The plaintiff's wife, therefore, contacted him immediately on phone and he came to the spot and noticed that his wife was standing outside the suit room which was locked. He, therefore, approached the Byculla Police Station and subsequently on 26/2/2000 he filed a complaint with the Deputy Commissioner of Police, Zone-III but nothing was done by these authorities. He, therefore, filed a suit for taking possession of the suit room.

4A. The plaintiff examined five witnesses in support of his case and the defendant no.4 stepped in the witness box in support of his case but he did not examine any other witness. Plaintiff was examined as P.W.1 whereas his wife was examined as P.W.3, P.W.2 Mohd. Salim Khan who is a Journalist and neighbour, P.W.4 Santosh Shinde, Clerk attached to the General Stamp Office, Fort, Mumbai and P.W.5 Mr. Narendra Shetye, a Rationing Inspector, attached to the Rationing Office, Dongri, Mumbai. The plaintiff

produced the documentary evidence like telephone bill dated 15/1/2000 in the name of Fayyas Ahmed for the period from 1/11/1999 to 31/12/1999 for an amount of Rs.501/- in respect of Telephone No.377311 which was installed at the suit premises during the relevant period, in support of his case that said Fayyas Ahmed was in possession of the suit room during that period. This evidence was accepted by the trial court to hold that the plaintiff came in possession of the suit room from Fayyas Ahmed and in rebuttal of the defendants' case that Fayyas Ahmed was not a tenant. The defendant no.4 had claimed for the first time that he visited the suit room on 10/1/2000 and rent receipt came to be executed on 15/1/2000 in respect of the rent for January and February 2000. Whereas agreement at Exh."Y" submitted by the defendant no.4 stated that he was allowed to stay in the suit premises as a tenant from 15/1/2000. On the other hand, the ration card of Fayyas Ahmed showed that only two persons were occupying the suit premises during the life time of Fayyas Ahmed i.e. he himself and his brother Asrar Ahmed. There was no dispute that Fayyas Ahmed was unmarried and except his brother there was no LR left behind him. The plaintiff stated while in the witness

box that he had paid an amount of Rs.2 lacs to Asrar Ahmed as stated in the MOU dated 31/12/1999. As against this, the defendant no.4 placed on record the affidavit at Exh.3 in support of his contentions that Fayyas Ahmed had surrendered his tenancy and handed over the suit room to the landlord. However, this affidavit no where stated that Fayyas Ahmed had handed over vacant and peaceful possession of the suit premises during his life time to the landlord. It was also noted that the affidavit was executed by one Mr. Shaikh Eizaz Ahmed i.e. defendant no.4. The plaintiff's wife in her evidence categorically stated that she had seen the defendant nos.1 and 3 breaking the lock of the suit premises and making a forcible entry into the same on 23/2/2000 at about 8.40 p.m. She stated that she was in the opposite house of her in-laws and she saw a crowd of 16-17 persons coming to her room along with Ashraf Khan - defendant no.3, who cut the lock of the suit room, which was put up by her, by an haxa-blade and, therefore, she contacted her husband at his place of work. This evidence remained intact during her cross-examination. She also stated that defendant no.3 pointed out a revolver at her husband when he reached the suit premises on

23/2/2000 and questioned the authority of the defendants to break open the lock and put a new lock. This evidence was corroborated by the evidence of the plaintiff and it could not be impeached in the cross-examination. The plaintiff stated in his evidence that the defendant no.3 pointed out a revolver against him and threatened him that if he would advance an inch further he would be shot. Inspite of this evidence against defendant no.3, he did not step in the witness box. The evidence of the Rationing Inspector (P.W.5) showed that the plaintiff had submitted an application on 4/2/2000 for a ration card and the suit room was shown as his place of residence. The report made by Mr. Gurjar, after visiting the suit room on 16/2/2000 and had confirmed that P.W.3 was in the suit room during his inspection. Apart from this evidence of the plaintiff and his wife, the evidence of P.W.2 also has been considered by the trial court. He was a neighbour and clearly stated that the plaintiff was forcibly dispossessed by the defendants on 23/2/2000. The so called agreement dated 15/1/2000 in favour of the defendant no.4 was disbelieved by the trial court as the date below the signature of defendant no.2 was in fact 15/2/2000

instead of 15/1/2000 and in addition, mere execution of tenancy could not prove possession of the suit premises unless the defendant no.1 stepped in the witness box and stated that the defendant no.4 was put in possession of the suit room on 15/1/2000. The trial court, therefore, recorded a conclusion that in collusion with the landlady the defendant no.4 made a forcible entry in the suit room by breaking open the lock on 23/2/2000 and the lock was broken by the defendant no.3 and when the plaintiff arrived at the site, defendant no.3 threatened him that he would be shot by the revolver if he moved an inch further. When the Court Commissioner took inventory of the articles in the suit room on 31/5/2000, it was noticed that only one pant and one shirt of defendant no.4 was found there, whereas number of articles of the plaintiff were found in the suit room by the Court Commissioner. There was no explanation from the defendant no.4 as to how the articles belonging to the plaintiff were found in the suit room when the Court Commissioner visited the same on 31/5/2000.

5. The entire evidence has been duly considered

by the trial court and the said evidence supports the conclusions drawn in favour of the plaintiff. The reasoning given by the trial court does not suffer from any errors apparent on the face of the record and, therefore, there is no case made out to interfere with the view taken by the trial court. The challenge to the impugned decree is devoid of merits and hence the revision petition is rejected summarily.

(B.H. Marlapalle,J.)